IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

NOTICE OF MOTION NO.21 OF 2006
IN
INSOLVENCY NOTICE NO.N/256 OF 2005

Re : M/s. Prabhudas Hirji & Co. & Ors.
..Judgment Debtors.

Ex-parte :
Atmaram Leasing Co. Pvt. Ltd. ..Judgment Creditor.

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Ms. R.C. Shukla for Judgment Creditor.
Ms. Seepa Gupta i/b Mr. A.M. Saraogi for Judgment Debtors.

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CORAM: DR. D.Y. CHANDRACHUD, J.

7th November, 2006.

P.C. :

The hearing of this Notice of Motion has been adjourned on 18th April, 2006, 25th April, 2006, 2nd May, 2006 and 6th June, 2006. The request for adjournment is hence refused. The Insolvency Notice dated 23rd December, 2005 is based on a judgment and decree dated 7th February, 2005 of this Court in Summary Suit 3291 of 2003 by which the Judgment Debtors were directed to pay a sum of Rs.2,31,500/- together with simple interest on the principal sum of Rs.2 lacs at the rate of 18% per annum from 24th August, 2003. An application was taken out for setting

aside the judgment and order dated 7th February, 2005. On 8th August, 2006 the Learned Single Judge set aside the ex parte decree on the condition that the Defendants shall deposit in Court the principal amount within a period of four weeks. It is an admitted position that the condition contained in the order dated 8th August, 2006 has not been complied with. In the affidavit in support of the Notice of Motion, it has been stated that parties have arrived at a settlement on 21st April, 2005. Admittedly, no part of the amount due and payable under the decree has been paid even in pursuance of the alleged settlement. In these circumstances, the Motion for setting aside the Insolvency Notice is thoroughly misconceived and will have to be dismissed. The Motion is accordingly dismissed.